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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, May 01, 2019
86th Legislature, Number 56
The House convenes at 10 a.m.
Part Two

The bills analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.

All HRO bill analyses are available online through TLIS, TLO, CapCentral, and the HRO website.

Dwayne Bohac
Chairman
86(R) - 56

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Wednesday, May 01, 2019
86th Legislature, Number 56
Part 2

SUBJECT: Changing the drug reimbursement methodology for Medicaid and CHIP

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — S. Thompson, Wray, Allison, Frank, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

2 absent — Coleman, Guerra

WITNESSES: For — Louis Rumsey, Alliance of Independent Pharmacist; Anjanette Wyatt, Clinical Care Pharmacy, Texas Association of Independent Pharmacy Owners; Hannah Mehta, Protect Texas Fragile Kids; Duane Galligher, Texas Independent Pharmacies Association; Susan Burek; (*Registered, but did not testify*: Ashley Bishop, AIP Texas; Jaime Capelo and Audra Conwell, Alliance of Independent Pharmacists; Cynthia Humphrey, Association of Substance Abuse Programs; Jay Bueche, H-E-B; Lindsay Lanagan, Legacy Community Health; Will Francis, National Association of Social Workers-Texas Chapter; Annie Spilman, NFIB; Rebecca Galinsky, Protect Texas Fragile Kids; Bradford Shields, Texas Federation of Drug Stores and Texas Society of Health-System Pharmacists; JD Fain and Kevin George, Texas Independent Pharmacies Association; Linda Litzinger, Texas Parent to Parent; Stephanie Chiarello and Debbie Garza, Texas Pharmacy Association; Michael Wright, Texas Pharmacy Business Council; John Heal, Texas TrueCare Pharmacies; Morris Wilkes, United Supermarkets; Holly Deshields, Walgreens; and nine individuals)

Against — Daniel Chambers, Cigna-Healthspring; Khang Tran-Tan, Cook Children Health Plan; Kay Ghahremani, Texas Association of Community Health Plans; Laurie Vanhoose, Texas Association of Health Plans; (*Registered, but did not testify*: Billy Phenix, America's Health Insurance Plans (AHIP); Lilalyn Punsalan, Community Health Choice; Mindy Ellmer, PCMA; Jessica Boston, Texas Association of Business)

On — (*Registered, but did not testify*: Rachel Butler, Gina Muniz,

Stephanie Muth, and Priscilla Parrilla, Health and Human Services Commission; Lindsay Lanagan, Legacy Community Health; Colby Schaeffer, Navigant)

BACKGROUND:

Government Code sec. 533.005 requires a contract between a Medicaid managed care organization (MCO) and the Health and Human Services Commission to include a requirement that the MCO maintain an outpatient pharmacy benefit plan for its enrolled recipients under which the MCO or pharmacy benefit manager (PBM) is required to ensure that drugs placed on a maximum allowable cost list meet certain specifications. The MCO or PBM also must review and update maximum allowable cost price information at least once every seven days to reflect any modification in pricing and must provide a process in which each network pharmacy provider can access sources used to determine the maximum allowable cost pricing.

DIGEST:

CSHB 3388 would require a managed care organization (MCO) that contracted with the Health and Human Services Commission (HHSC) or pharmacy benefit manager (PBM) to reimburse a pharmacy or pharmacist, including a Texas retail or specialty pharmacy, for dispensed prescription drugs. The bill would remove provisions regarding maximum allowable cost requirements and replace them with requirements that the MCO or PBM comply with the bill's reimbursement methodology as a condition of contract retention and renewal.

Reimbursement methodology. Pharmacies or pharmacists would receive reimbursement if they dispensed a prescription drug, other than a drug obtained under the federal Public Health Service Act sec. 340B, to a recipient for at least the lesser of:

- the reimbursement amount under the vendor drug program (VDP), including a dispensing fee not less than the fee under the VDP; or
- the amount the pharmacy or pharmacist claimed, including the gross amount due or the usual and customary charge to the public for the drug.

Pharmacies and pharmacists also would receive reimbursement if they dispensed a prescription drug at a discounted price under Public Health

Service Act sec. 340B to a recipient for at least the lesser of the reimbursement amount under the VDP, including a dispensing fee that was not less than the fee under the VDP. The dispensing fee adopted by the executive commissioner would have to be based on Texas pharmacies' professional dispensing costs for those drugs.

The bill would require the reimbursement methodology adopted by the executive commissioner of HHSC to be:

- consistent with the actual prices Texas pharmacies pay to acquire prescription drugs marketed or sold by a specific manufacturer; and
- based on the National Average Drug Acquisition Cost published by the Centers for Medicare and Medicaid Services or another executive commissioner-approved publication.

HHSC duties. The executive commissioner would have to develop a process for the periodic study of Texas retail and specialty pharmacies' actual acquisition costs for prescription drugs and professional dispensing costs. The results of each study would be posted on HHSC's website.

The bill would require HHSC at least once every two years to conduct a study of Texas pharmacies' dispensing costs for retail and specialty prescription drugs and drugs obtained under the Public Health Service Act. Based on the study's results, the executive commissioner would have to adjust the minimum amount of the professional dispensing fees.

Other provisions. The bill's required reimbursement methodology for prescription drugs also would apply to the state Children's Health Insurance Program (CHIP). The bill would repeal a requirement that a maximum allowable cost list specific to a provider and maintained by an MCO or PBM be confidential.

The bill would take effect March 1, 2020.

SUPPORTERS SAY:

CSHB 3388 would help ensure pharmacies received fairer reimbursement for Medicaid managed care and CHIP prescriptions. Since prescription drug benefits were added to Medicaid managed care in 2012, the pharmacy benefit managers (PBMs) that administer pharmacy benefits for

managed care organizations (MCOs) have routinely reimbursed pharmacies at below the acquisition cost for many drugs. Independent pharmacies lack the ability to negotiate with PBMs and MCOs, which has caused some of these pharmacies to close due to financial constraints.

The bill would allow Medicaid managed care reimbursements for prescription drugs to be tied to the National Average Drug Acquisition Cost (NADAC), which is a more steady and accurate pricing benchmark. Allowing the use of the NADAC would improve transparency in prescription drug reimbursement rates and be fairer to pharmacies, patients, and taxpayers.

The bill would not affect which drugs were covered by a Medicaid or CHIP plan, the generics or brand name medications covered by a plan, the formulary for these plans, or rebates. The bill would increase fairness for prescription drug benefits in MCO contracts.

OPPONENTS SAY:

CSHB 3388 could increase state costs by changing the prescription drug reimbursement methodology for PBMs and MCOs. PBMs help save the state money and improve patient outcomes by negotiating better deals with pharmacies and ensuring patients do not take unnecessary drugs. Reinstating a prescription drug benefit model that was implemented before 2012 could lead to more patient ER visits, increased opioid prescription rates, and less medication adherence.

NOTES:

According to the Legislative Budget Board, the bill would have an estimated negative impact of $8.1 million to general revenue related funds through fiscal 2020-21.

SUBJECT: Requiring TDCJ custody of jail inmates eligible for mandatory release

COMMITTEE: Corrections — committee substitute recommended

VOTE: 9 ayes — White, Allen, Bailes, Bowers, Dean, Morales, Neave, Sherman, Stephenson

0 nays

WITNESSES: For — Shawn Dick, Williamson County District Attorney; Tom Ketterhagen; John Prezas; (*Registered, but did not testify*: Andy Kahan, Crime Stoppers of Houston and Parents of Murdered Children; Carl Leihardt)

Against — None

On — (*Registered, but did not testify*: David Gutierrez and Bettie Wells, Texas Board of Pardons and Paroles)

BACKGROUND: Government Code sec. 508.147 requires parole panels to release inmates from prison under a program called mandatory supervision when their actual calendar time served plus good conduct time equals the term to which the inmates were sentenced. However, there is a provision making some releases discretionary. Under Government Code 508.149(b), inmates may not be released to mandatory supervision if a parole panel determines that their good conduct time is not an accurate reflection of the inmate's potential for rehabilitation and the inmate's release would endanger the public. Government Code sec. 508.149(a) makes inmates ineligible for release on mandatory supervision if they are serving sentences or had been previously convicted of specific crimes.

Inmates released on mandatory supervision are considered to be on parole and are under the supervision of the parole division of the Texas Department of Criminal Justice (TDCJ).

Concerns have been raised that the practice of some defendants being released directly from local jails to mandatory supervision occurs without

victims knowing or being able to be involved in the release process.

DIGEST:

CSHB 2772 would require the Texas Department of Criminal Justice (TDCJ) to take custody of inmates who at the time they were sentenced, were confined in a county jail and were eligible for release on mandatory supervision, before the inmate could be released on mandatory supervision.

As soon as practicable after taking custody of an inmate, TDCJ would have to notify victims and their guardians or the close relative of a deceased victim that the inmate was eligible for release to mandatory supervision. TDCJ would have to notify the victim, guardian, or close relative that the individual had 14 days after the date of the notice to submit a written statement to a parole panel considering whether to release the inmate. The statement could include information on the effect of the inmate's offense on the victim, guardian, or close relative. Parole panels could interview a victim, guardian of a victim, or close relative about the release of the inmate to mandatory supervision.

The bill would take effect September 1, 2019, and would apply to defendants sentenced for an offense on or after that date.

SUBJECT: Requiring HHSC to review bed reallocation for intermediate care facilities

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Frank, Hinojosa, Clardy, Deshotel, Klick, Meza, Noble

0 nays

2 absent — Miller, Rose

WITNESSES: For — Steven Campbell, Breckenridge Village of Tyler

Against — (*Registered, but did not testify*: Dennis Borel, Coalition of Texans with Disabilities)

On — Susan Murphree, Disability Rights TX; Stephanie Allred and Molly Lester, Health and Human Services Commission

BACKGROUND: Health and Safety Code sec. 533A.062 requires the Health and Human Services Commission to biennially develop a proposed plan on the long-term care of persons with an intellectual disability. The plan must specify the capacity of the home and community-based services waiver program for persons with an intellectual disability and the number and levels of new beds in intermediate care facilities to be authorized in each region.

Sec. 531.002 defines "ICF-IID" as a medical assistance program serving individuals with an intellectual or developmental disability who receive care in intermediate care facilities.

DIGEST: CSHB 3117 would require the Health and Human Services Commission (HHSC) to review the statewide bed capacity of community ICF-IID facilities for individuals with an intellectual disability or a related condition and to develop a process to reallocate beds held in suspension by HHSC. This process would be part of the state's long-term care plan for persons with an intellectual disability and could include:

- criteria by which IFC-IID program providers could apply to HHSC

to receive reallocated beds; and

- a means to reallocate the beds among health services regions.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

CSHB 3117 would allow intermediate care facilities to meet the needs of more individuals with intellectual or developmental disabilities by requiring the state to develop a plan to reallocate licensed beds that were out of use. It also would allow intermediate care facilities to maximize their resources and available space by eliminating the prohibitive expense of buying licensed beds under suspension.

Intermediate care facilities face long interest lists for admission due to the statewide scarcity of licensed beds. More individuals could be served by requiring the Health and Human Services Commission to identify the number of beds in suspension and develop a plan for reallocating them. Eliminating the need to buy expensive licensed beds under suspension from other facilities also would help intermediate care facilities utilize existing resources. Eliminating this expense would allow them to redirect their resources to better serve residents, residents' families, and the community.

The bill would help direct the use of beds already licensed by the state for use in intermediate care facilities, a prudent use of state resources. It also would come at no cost to the state because the reallocation process would be developed using funds already appropriated. Although the bill would not directly address the large interest list for the Medicaid community-based waiver program, it would be a first step toward improving access to care for individuals with intellectual or developmental disabilities.

OPPONENTS SAY:

CSHB 3117 would not fully address the lack of services for individuals with intellectual or developmental disabilities because it would focus only on a small part of this population. There is currently a large statewide interest list for the Medicaid community-based waiver program for individuals with intellectual or developmental disabilities. Because the bill would focus only on the reallocation of beds in a handful of intermediate

care facilities, it would not address this larger problem. Instead of focusing simply on beds in suspension, the state should direct its attention toward developing a comprehensive plan on access to community-based services.

SUBJECT: Prohibiting death penalty for crimes by persons with severe mental illness

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Collier, J. González, Hunter, Moody, Pacheco

3 nays — Zedler, K. Bell, Murr

1 absent — P. King

WITNESSES: For —Brian Middleton, Fort Bend County District Attorney's Office; Greg Hansch, National Alliance on Mental Illness Texas; Will Francis, National Association of Social Workers-Texas Chapter; Edward Keith, Regional Public Defender for Capital Cases; Michael Barba, Texas Catholic Conference of Bishops; Bobby Mims, Texas Criminal Defense Lawyers Association; Elsa Alcala and Amanda Marzullo, Texas Defender Service; Patrick McCann; (*Registered, but did not testify*: Nicholas Hudson, American Civil Liberties Union of Texas; Philip Kazen, Bexar County Criminal District Attorney's Office; Dennis Borel, Coalition of Texans with Disabilities; Cate Graziani, Grassroots Leadership and Texas Advocates for Justice; Kathleen Mitchell, Just Liberty; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Eric Kunish, National Alliance on Mental Illness Austin; Alycia Speasmaker, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Texas NAACP; Kevin Stewart, Texas Psychological Association; Kyle Piccola, The Arc of Texas; Chris Harris; Zoe Russell; Jason Vaughn)

Against — Vincent Giardino, Tarrant County Criminal District Attorney's Office; (*Registered, but did not testify*: Frederick Frazier, Dallas Police Association and state FOP; Ray Hunt, Houston Police Officer's Union; AJ Louderback, Sheriffs Association of Texas; Mitch Landry, Texas Municipal Police Association)

On — Raoul Schonemann

BACKGROUND: Penal Code sec. 12.31 establishes the penalties for capital felonies, as defined in statute. In capital murder cases in which the state seeks the

death penalty, individuals found guilty must be sentenced to death or life in prison without parole in the Texas Department of Criminal Justice. In capital murder cases in which the state does not seek the death penalty, those found guilty must be sentenced to life without parole.

Penal Code sec. 8.01 establishes the state's insanity defense, which makes it an affirmative defense to prosecution for an offense that, at the time of the conduct charged, the actor did not know that his conduct was wrong as a result of severe mental disease or defect.

DIGEST:

CSHB 1936 would prohibit death sentences for capital murder defendants who were determined under the criteria in the bill to be a person with severe mental illness at the time of the offense. If found guilty of capital murder, these defendants would have to be sentenced to life in prison without parole.

The bill would define "person with severe mental illness" to mean a person who had schizophrenia, a schizoaffective disorder, or a bipolar disorder and, as a result of that disorder, had active psychotic symptoms that substantially impaired the person's capacity to appreciate the nature, consequences, or wrongfulness of the person's conduct or to exercise rational judgment in relation to the person's conduct.

Notice of intent to raise issue. A defendant planning to offer evidence that the defendant was a person with severe mental illness at the time of the alleged offense would have to file a notice with the court at least 30 days before a trial. The notice would have to tell the court that the defendant intended to offer the evidence and certify that a copy of the notice had been given to the prosecutor in the case.

Unless timely notice was given, evidence that the defendant was a person with severe mental illness at the time of the commission of the alleged offense would not be admissible at the guilt or innocence stage of the trial unless the court found that good cause existed for failing to give notice.

Jury determination. The issue of whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense would be submitted to the jury only if the issue was supported by

evidence. The jury would have to decide the issue and return a special verdict on the issue that was separate from the jury's verdict on guilt or innocence. A defendant would have to prove by clear and convincing evidence that the defendant was a person with severe mental illness at the time of the commission of the alleged offense.

Appointment of expert. On the request of either party or on the judge's own motion, the judge would have to appoint a disinterested expert experienced and qualified in the field of diagnosing mental illness to examine the defendant and determine whether the defendant was a person with severe mental illness.

The judge could order the defendant to submit to an exam by the expert. Exams would have to be narrowly tailored to determine whether the defendant had the specific disorder claimed and could not include an assessment of the risk of danger the defendant could pose to any person. Appointed experts would have to provide the defense attorney and the prosecutor with all notes and data from the exam.

Statements made by the defendant during an exam could not be admitted into evidence during the trial.

Effect of determination. If the jury determined that the defendant was not a person with severe mental illness at the time of the commission of an alleged offense and the defendant was convicted of that offense, the judge would have to conduct a sentencing proceeding under the standard procedures used in capital cases. At that proceeding, defendants could present evidence of a mental disability as allowed under those standard procedures.

The bill would take effect September 1, 2019, and would apply to trials that started on or after that date, regardless of when the offense was committed.

SUPPORTERS SAY:

Justice is not served and individuals' rights are not protected when the state executes a person who at the time of an offense was a person with a severe mental illness, and CSHB 1936 would help prevent such executions. The death penalty should be limited to the most culpable

offenders, and those with severe mental illness at the time of an offense do not fit the criteria. The bill would establish fair standards and procedures to determine if defendants in a capital case had a severe mental illness while holding defendants accountable for their actions with a punishment of life without parole.

Given a series of U.S. Supreme Court decisions, including ones barring execution of defendants with intellectual disabilities, those who were juveniles at the time of an offense, and those incompetent at the time of execution, it is inconsistent to allow the execution of defendants described by the bill. CSHB 1936 would be in line with those court decisions and the treatment of defendants with reduced culpability. The bill also could help address concerns about the possibility of executing an innocent person with severe mental illness due to issues including a potential for false confessions and an impaired ability to help their defense.

Current laws and procedures are insufficient to address issues of severe mental illness at the time an offense is committed and do not set an appropriate standard. Current determinations about whether someone is competent to stand trial or to be executed do not consider a person's mental illness and impairments at the time of an offense.

The insanity defense imposes an inappropriate standard that applies a complete defense to conviction and does not address the issues contemplated in the bill. When successful, this defense results in a defendant being declared not guilty by reason of insanity. Usually these defendants are sent to a mental health institution from which they eventually could be released if certain conditions are met. Under CSHB 1936, individuals who met the standards in the bill would not go unpunished but would receive life without parole if convicted.

CSHB 1936 is narrowly drawn to apply to the most severely mentally ill and to require decisions to be made on a case-by-case-basis. Defendants would have to prove their claim by clear and convincing evidence to ensure an adequate burden of proof. Disinterested experts also would be used to evaluate the defendant. The bill would set deadlines for notices to courts about an intent to raise the issue of severe mental illness, and if the notice was not timely, the issue would not be admissible at the guilt or

innocence phase. Baseless claims would be avoided because the issue could be submitted to the jury only if it was supported by evidence.

The process that would be established by the bill could save the state money because trials themselves could be shorter, confinement for the convicted would be different, and appeals would be streamlined.

OPPONENTS SAY:

Current law establishes appropriate standards and procedures for determining who can receive death sentences, and the state does not need to create a new standard and process to properly handle cases of defendants with severe mental illness or to implement court rulings about the death penalty. Under current law, a person can be declared incompetent to stand trial or a defendant may be found not guilty by reason of insanity. In addition, a jury can consider mental illness as a mitigating circumstance when imposing a sentence in a capital case and can impose life without parole. There is a thorough appeals system through state and federal courts, and those with death sentences must be competent to be executed.

The criteria that would be established by CSHB 1936 to define persons with severe mental illness would create a broader, lower standard for being found ineligible for the death penalty. The current insanity defense considers if an individual, as a result of severe mental disease or defect, did not know that the individual's conduct was wrong. Part of the standard created by CSHB 1936 would consider whether a person appreciated the nature, consequences, or wrongfulness of conduct or exercised rational judgment. This new standard would be untested in Texas and likely would be raised by numerous defendants. In addition, the standard would have to be met by clear and convincing evidence, a burden of proof not commonly used in criminal cases.

The bill could result in trial delays or additional appeals. The issue of severe mental illness could be raised up until 30 days before a trial that likely would have been in the preparation phase for a year or two, potentially delaying the trial. If the issue was not raised under the deadlines in the bill, a defendant might later raise the issue of ineffective assistance of counsel. Texas' procedures in capital murder cases have been well established through litigation and practice, and any court

scrutiny of the change in the bill could lengthen the process.

SUBJECT: Allowing peace officers to release individuals with intellectual disabilities

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 8 ayes — Nevárez, Paul, Burns, Calanni, Clardy, Goodwin, Lang, Tinderholt

0 nays

1 absent — Israel

WITNESSES: For — Dennis D. Wilson, Sheriff's Association of Texas; Alex Cogan, The Arc of Texas; Yolanda Davis and Noel Johnson, Texas Municipal Police Association; (*Registered, but did not testify*: Caitlin McClune, Austin Justice Coalition; Chris Jones, Combined Law Enforcement Associations of Texas; Chris Masey, Coalition of Texans with Disabilities; Lisa Flores, Easter Seals Texas; Ray Hunt, Houston Police Officers Union; Kathleen Mitchell, Just Liberty; CJ Grisham, Open Carry Texas; Mary Mergler, Texas Appleseed; Lee Johnson, Texas Council of Community Centers; Alycia Speasmaker, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Linda Litzinger, Texas Parent to Parent; Alexis Tatum, Travis County Commissioners Court)

Against — None

DIGEST: CSHB 3540 would allow a peace officer, in lieu of arresting certain persons with an intellectual or developmental disability, to release the person at the person's residence if the officer:

- believed confinement of the person in a correctional facility would be unnecessary to protect the person and other individuals at the residence; and
- made reasonable efforts to consult with staff at the residence and with the person regarding the decision.

These provisions would apply only to a person with an intellectual or developmental disability who resided at a group home or an intermediate care facility for persons with an intellectual or developmental disability.

A peace officer and the agency or political subdivision that employed the peace officer could not be held liable for damage to persons or property that resulted from the actions of an individual released under the bill's provisions.

The bill would take effect September 1, 2019.

SUBJECT: Permitting public participation at certain meetings of governmental bodies

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 8 ayes — Bohac, Anderson, Biedermann, Cole, Dominguez, Huberty, Rosenthal, Stickland

0 nays

1 absent — Coleman

WITNESSES: For — (*Registered, but did not testify*: Chris Masey, Coalition of Texans with Disabilities; Calvin Tillman; Al Zito)

Against — None

On — (*Registered, but did not testify*: Adam Haynes, Conference of Urban Counties)

DIGEST: HB 2840 would require certain governmental bodies to allow any member of the public who wished to address the body regarding an item on the agenda for an open meeting to do so at the meeting before or during the body's consideration of that item.

The bill would apply to:

- a county commissioners court;
- a municipal governing body;
- a deliberative body with rulemaking or quasi-judicial power and that was classified as a department, agency, or political subdivision of a county or municipality;
- a school district board of trustees;
- a county board of school trustees;
- a county board of education;
- the governing board of a special district created by law;
- a local workforce development board;
- a nonprofit corporation eligible to receive funds under the federal

community services block grant program and authorized by the state to serve a geographic area of the state;

- a nonprofit corporation that provided a water supply, wastewater service, or both, and was exempt from ad valorem taxation; and
- a joint board created to exercise the constituent powers of each public agency with respect to an airport, air navigation facility, or airport hazard area.

HB 2840 would allow a governmental body to which it applied to adopt reasonable rules regarding the public's right to address that body, including those that limited the total amount of time that a member of the public could address the body on a given item. If a governmental body did not use simultaneous translation equipment, a member of the public who addressed the body through a translator would have to be given at least twice the amount of time as a member of the public who did not require the assistance of a translator.

A governmental body could not prohibit public criticism of that body unless that criticism was otherwise prohibited by law.

The bill would take effect September 1, 2019.

SUBJECT: Establishing requirements for open meetings of charter schools

COMMITTEE: Public Education — committee substitute recommended

VOTE: 13 ayes — Huberty, Bernal, Allen, Allison, Ashby, K. Bell, Dutton, M. González, K. King, Meyer, Sanford, Talarico, VanDeaver

0 nays

WITNESSES: For — Mark Terry, Texas Elementary Principals and Supervisors Association; (*Registered, but did not testify*: Andrea Chevalier, Association of Texas Professional Educators; Chris Masey, Coalition of Texans with Disabilities; Priscilla Camacho, Dallas Regional Chamber; Colby Nichols, Fast Growth School Coalition; Kelley Shannon, Freedom of Information Foundation of Texas; Staci Weaver, Legacy Preparatory Charter Academy; Bob Popinski, Raise Your Hand Texas; Grover Campbell and Jayme Mathias, Texas Association of School Boards; Barry Haenisch, Texas Association of Community Schools; Casey McCreary, Texas Association of School Administrators; Paige Williams, Texas Classroom Teachers Association; Mike Hodges, Texas Press Association; Kyle Ward, Texas PTA; Dee Carney, Texas School Alliance; Lisa Dawn-Fisher, Texas State Teachers Association; Patty Quinzi, Texas American Federation of Teachers; Dusty Harshman)

Against — (*Registered, but did not testify*: John Armbrust, Austin Achieve; Ginny Janak, CLEAR Public Charter School; Hannah LaPorte, IDEA Public Schools; Kathleen Zimmermann, Nyos Charter School; Pablo Barrera and Thomas Sage, Texas Charter School Association; and six individuals)

On — Eric Marin, Texas Education Agency; Christine Nishimura, Texas Charter Schools Association (*Registered, but did not testify*: Heather Mauze, Texas Education Agency)

BACKGROUND: Government Code sec. 551.128 requires certain entities, such as elected school district boards of trustees with student enrollments of 10,000 or more, to make a video and audio recording of each regularly scheduled

open meeting that is not a work session or a special called meeting and each open meeting that is a work session or special meeting if the board of trustees votes on any matter or allows public comment or testimony. An archived copy of the video and audio recording must be made available on the internet. Sec. 12.1051 applies requirements regarding open meetings or availability of information that apply to a school district to the governing body of a charter holder and the governing body of an open-enrollment charter school.

Interested parties have noted that meetings of open-enrollment charter school governing bodies could take place in an area far from the charter school campus location, which may make attendance difficult, and that additional steps should be taken to ensure transparency.

DIGEST:

CSHB 570 would require the governing body of a charter holder and the governing body of an open-enrollment charter school to hold each open meeting within the area served by the school. The governing body would be required to broadcast the open meeting over the internet if the school included campuses that were located in noncontiguous municipalities.

The bill would apply only to an open meeting held on or after the effective date of the bill.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Allowing attorney general to advertise Choose Life account grants

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Leach, Krause, Meyer, Smith, White

4 nays — Farrar, Y. Davis, Julie Johnson, Neave

WITNESSES: For — Joe Pojman, Texas Alliance for Life; (*Registered, but did not testify*: Girien Salazar, Christian Life Commission, Texas Baptists; Angela Smith, Fredericksburg Tea Party; James Dickey and Tanya Robertson, Republican Party of Texas; Amy O'Donnell, Texas Alliance for Life; Mary Castle, Texas Values; Nicole Hudgens and Jonathan Saenz, Texas Values Action; Jennifer Allmon, The Texas Catholic Conference of Bishops; Kathy Haigler; JoAnn Lowe)

Against — (*Registered, but did not testify*: Drucilla Tigner, ACLU of Texas; Aimee Arrambide, NARAL Pro-Choice Texas Foundation; Carisa Lopez, Texas Freedom Network; Delma Limones)

On — (*Registered, but did not testify*: Ryan Vassar, Office of the Attorney General)

BACKGROUND: Government Code sec. 402.036 governs the Choose Life account, which is administered by the attorney general and consists of money that the Texas Department of Motor Vehicles collects from issuing license plates with the words "Choose Life," as well as gifts, grants, donations, and legislative appropriations. The attorney general may use the money in the account only to make grants to certain eligible organizations and to defray the costs of administering the account.

To be eligible to receive grants, organizations must:

- be exempt from federal income taxation;
- provide counseling and material assistance to pregnant women who are considering placing their children for adoption;
- not charge for the services they provide; and

- not provide abortions or abortion-related services or make referrals to abortion providers themselves or contract with or be affiliated with organizations that do.

Eligible organizations that receive grants from the Choose Life account must use the money to provide:

- for the material needs of pregnant women who are considering placing their children for adoption, including the provision of clothing, housing, prenatal care, food, utilities, and transportation;
- for infants who are awaiting placement with adoptive parents;
- adoption training and advertising;
- pregnancy testing; or
- preadoption or postadoption counseling.

DIGEST:

HB 2271 would allow the attorney general to use up to 2 percent of the Choose Life account's gross receipts from the previous state fiscal year to advertise that fees paid for Choose Life license plates could be used to fund Choose Life account grants to eligible organizations.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

HB 2271 would allow the attorney general to increase awareness of the existing Choose Life grant system by advertising to pro-life organizations that could benefit from the grants.

In allowing the attorney general to advertise these grants, the bill could increase the number of individuals who purchased Choose Life license plates and increase the amount of money given to the grant program.

OPPONENTS SAY:

HB 2271 would allow the attorney general to unfairly advertise one particular political viewpoint over other viewpoints.

SUBJECT: Repealing local filing for business assumed name certificate

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Martinez Fischer, Darby, Beckley, Collier, Landgraf, Moody, Patterson, Shine

0 nays

1 absent — Parker

WITNESSES: For — Daryl Robertson, Mike Tankersley, and Stephen Tarry, Texas Business Law Foundation; (*Registered, but did not testify*: Karen Neeley, Independent Bankers Association of Texas; John McCord, National Federation of Independent Business; Sandy Hoy, Texas Apartment Association; John Kuhl, Chuck Mains, and Val Perkins, Texas Business Law Foundation; Lorna Wassdorf)

Against — None

On — (*Registered, but did not testify*: Carmen Flores, Texas Secretary of State)

BACKGROUND: Business and Commerce Code ch. 71, subch. C requires business entities that regularly conduct business or render professional services in the state under an assumed name to file an assumed name certificate with the secretary of state and the county clerk in the county where the entity's principal office or principal place of business is located.

It has been suggested that the local filing requirement is unnecessary because assumed name certificates filed at the state level are available to the public online.

DIGEST: HB 3609 would eliminate the requirement for business entities operating under an assumed name to file an assumed name certificate in the applicable county clerk's office.

The bill would take effect September 1, 2019.

SUBJECT: Creating criminal, civil penalties for damage to critical infrastructure

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Leach, Krause, Meyer, Neave, Smith, White

3 nays — Farrar, Y. Davis, Julie Johnson

WITNESSES: For — James Mann, Texas Pipeline Association; Al Philippus, Valero; (*Registered, but did not testify*: Lindsey Miller, Anadarko Petroleum; Julia Rathgeber, Association of Electric Companies of Texas; Dennis Kearns, BNSF Railway; June Deadrick, CenterPoint Energy; Matt Barr, Cheniere Energy; Steve Perry, Chevron USA; Jay Brown, Concho Resources; Shayne Woodard, Enbridge; Samantha Omey, ExxonMobil; Mark Vane, Husch Blackwell Strategies; Lee Loftis, Independent Insurance Agents of Texas; Martha Doss, Latinos for Trump; Tom Oney, Lower Colorado River Authority; James Mathis, Occidental Petroleum; Neftali Partida, Phillips 66; Terry Harper, Republican Party of Texas SD21; Kinnan Golemon, Shell Oil Company; Caleb Troxclair, SM Energy; Lee Parsley, Texans for Lawsuit Reform; Michael Garcia, Texas Association of Manufacturers; Austin McCarty, Texas Chemical Council; Carol Sims, Texas Civil Justice League; Shanna Igo, Texas Municipal League; Cory Pomeroy, Texas Oil and Gas Association; Thure Cannon, Texas Pipeline Association; Charlotte Owen; Denise Seibert; Jacqueline Stringer)

Against — Robin Schneider, Texas Campaign for the Environment; Marisa Perales; Alyssa Tharp; (*Registered, but did not testify*: Alex Norton, Extinction Rebellion; Kelley Shannon, Freedom of Information Foundation of Texas; Cyrus Reed, Lone Star Chapter Sierra Club; Michael Coleman, Public Citizen; Karen Hadden, SEED Coalition; and nine individuals)

On — (*Registered, but did not testify*: Robert Kepple, Texas District and County Attorneys Association)

BACKGROUND: Government Code sec. 423.0045 defines "critical infrastructure facility" by listing specific types of facilities that are completely enclosed by a

fence or other barrier designed to exclude intruders or clearly marked with a posted sign indicating that entry is forbidden, including certain refining, electrical, chemical, water, natural resources, telecommunications, processing, feeding, and infrastructure facilities.

The definition also includes portions of aboveground pipelines, oil or gas drilling sites, wellheads and other oil and gas related facilities if enclosed by a fence or other physical barrier obviously designed to exclude intruders.

DIGEST:

CSHB 3557 would create the Critical Infrastructure Protection Act and establish the felony offenses of damage to critical infrastructure facility and intent to damage critical infrastructure facility and would provide civil penalties related to the offenses.

In addition to the definition of "critical infrastructure facility" under Government Code sec. 423.0045, the bill would include a critical infrastructure facility that was under construction and all equipment and appurtenances used during construction.

Offenses. The bill would make it a crime for a person to, without the effective consent of the owner, intentionally or knowingly damage, destroy, vandalize, deface, or tamper with a critical infrastructure facility or impede, inhibit, or otherwise interfere with its operation.

This offense would be a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000).

It would be a crime to, without the effective consent of the owner, enter or remain on or in a critical infrastructure facility with the intent to damage, destroy, vandalize, deface, or tamper with the facility or impede, inhibit, or otherwise interfere with its operation.

This offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000).

If an offense under the bill also constituted an offense under other law, a person could be prosecuted for either or both offenses.

Punishment for corporations, associations. A court would be required to sentence a corporation or association found guilty of an offense under the bill to pay a fine of $1 million.

Restitution. If an offense resulted in damage to or destruction of property, a court could order an offender to make restitution to the owner in an amount equal to the value of the property on the date of the offense.

Civil liability. A defendant who engaged in conduct that constituted an offense under the bill would be liable to the property owner for damages arising from that conduct.

It would not be a defense to liability that the defendant had been acquitted or had not been prosecuted or convicted under the bill, or had been convicted of a different offense or of a different type or class of offense, for the conduct.

Vicarious liability. Regardless of the relationship between the organization and the person, an organization that compensated a person for engaging in conduct occurring on the premises of a critical infrastructure facility would be vicariously liable to the property owner for damages arising from the conduct if it constituted an offense.

Damages. A claimant who prevailed in a suit under the bill would be awarded actual damages, court costs, and reasonable attorney's fees. In addition, the claimant could recover exemplary damages.

Cause of action cumulative. The cause of action created by the bill would be cumulative of any other remedy provided by common law or statute.

Nonapplicability. Law relating to actions involving the exercise of certain constitutional rights and provisions limiting the amount of recovery in certain actions would not apply to a cause of action arising under the bill.

Other provisions. To the extent of any conflict, CSHB 3557 would

prevail over another bill of the 86th Regular Session.

The bill would take effect September 1, 2019, and provisions relating to a cause of action would apply only to those accrued on or after that date.

SUPPORTERS SAY:

CSHB 3557 would protect critical infrastructure facilities and private property owners by creating strong criminal penalties and civil liabilities for individuals and organizations to deter activities that damage or intend to damage such facilities.

Critical infrastructure facilities are essential to daily life, and the Legislature should take action to ensure that facilities in Texas are protected against intentional damage. There are well-documented incidents of coordinated criminal activity that were aimed at damaging or destroying critical infrastructure facilities or impeding their operations or construction. Intentional damage can result in costly clean-up operations that are largely paid for by state or local governments or the operator, rather than the person or organization that committed the damage. The bill would provide protections not only against intentional damage but also against construction delays and shutdowns, which are costly to businesses and Texans.

Current law provides only minimal criminal and civil penalties for people trespassing on critical infrastructure facilities with the intent to do damage. These penalties amount to a slap on the wrist, and often related cases are dismissed. It is necessary to increase the consequences to deter those who wish to do harm.

The bill would not restrict or otherwise affect current laws that allow for free speech and the right to protest. The bill would affect only people who trespass and cause damage. This would not prevent people from protesting so long as nothing was damaged.

The bill would allow a person to be prosecuted under the bill, for an offense under other law if applicable, or for both offenses. This would not require a prosecutor to charge a person for an offense under the bill but would simply provide prosecutors with another tool. They would have the

discretion to choose between existing law or the bill and decide the charge based on the seriousness of the offense or if there was well-considered public interest. Under the bill, a protestor placing a sticker on a pipeline or spray painting a facility would most likely still be charged under existing law, so long as no damage was done.

OPPONENTS SAY:

CSHB 3557 is unnecessary because existing law is sufficient to punish the activities that would constitute an offense under the bill. Damaging, destroying, tampering with, or defacing critical infrastructure facilities or entering or remaining on a facility already would be covered under Texas Penal Code criminal mischief and trespassing statutes. By creating felony offenses, the bill would overly criminalize these activities that are already lesser offenses under current law.

The high criminal and civil penalties, breadth of the offenses, and broad definition of critical infrastructure facility to include construction sites would likely have a chilling effect on free speech and assembly rights. For example, individuals, organizations, or landowners wanting to protest construction of a new pipeline could be subject to a felony offense under the bill. While some are willing to risk lesser offenses, most may opt to not exercise their rights for fear of harsh penalties.

Additionally, the bill is too broad and could impose severe penalties for generally benign activities. Vandalizing or defacing a critical infrastructure facility would not inherently cause damage, and the bill could open up the possibility of a person being charged with a second-degree felony for putting a sticker on a pipeline or spray painting a facility.

The vicarious liability for organizations that compensated someone participating in activities that could be an offense under the bill amounts to guilt by association. The bill is too broad, and employers or nonprofits could be liable for damages even if all the organization did was pay for travel to a peaceful protest or just because the charged person was a member of the organization. It is impossible for an organization to control all of its employees or members.

OTHER

The punishment for corporations and associations found guilty under

OPPONENTS SAY:

CSHB 3557 should be amended to provide for more discretion. Instead of requiring a court to sentence a corporation or association to pay a fine of exactly $1 million, the bill should provide for a range of penalties to give prosecutors, judges, and juries discretion to decide the proper punishment.

SUBJECT: Creating a state repository for open educational resources

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 9 ayes — C. Turner, Stucky, Button, Frullo, Howard, E. Johnson, Pacheco, Schaefer, Walle

0 nays

2 absent — Smithee, Wilson

WITNESSES: For — Dustin Meador, Texas Association of Community Colleges; Nicole Eversmann (*Registered, but did not testify*: Mike Meroney, Texas Association of Manufacturers)

Against — None

On — (*Registered, but did not testify*: Rex Peebles, Texas Higher Education Coordinating Board)

BACKGROUND: Education Code sec. 51.451 defines an "open educational resource" (OER) as a teaching, learning, or research resource that is in the public domain or has been released under an intellectual property license that permits the free use, adaptation, and redistribution of the resource by any person. The term may include full course curricula, course materials, modules, textbooks, media, assessments, software, and any other tools, materials, or techniques, whether digital or otherwise, used to support access to knowledge.

The Learning Technology Advisory Committee is a standing committee within the Texas Higher Education Coordinating Board (THECB) that informs the board of how distance education and computer assisted instruction, including e-learning tools such as electronic textbooks and open-source materials, can help the state reach the goals of the 60x30TX strategic plan.

Interested parties have suggested that OERs are gaining popularity due to

the increasing costs of textbooks but are too decentralized for some universities to gain information about or access to these resources.

DIGEST:

HB 3652 would require the Texas Higher Education Coordinating Board (THECB) to contract with a high-quality open educational resource (OER) repository to develop and maintain a web portal customized to meet the needs of individual institutions of higher education, students, and others who may benefit from access to OERs.

OERs available through the portal would have to be searchable by course or learning outcome, program or field of study, marketable skills, college readiness, and other topics as determined by THECB. The portal would have to provide access to repositories that maintained a wide range of OERs, including full courses.

Resources developed with state funds would be required to be available under a Creative Commons license and submitted for use as an OER through a repository available through the portal. A publisher could submit instructional materials for inclusion in a repository available through the portal.

By September 1, 2020, THECB would be required to develop the web portal for OER repositories. In establishing, maintaining, or marketing the portal, the board could request the assistance of the Learning Technology Advisory Committee.

The bill would take effect September 1, 2019.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about $248,000 to general revenue related funds through fiscal 2020-21.

SUBJECT: Investing certain Permanent School Fund cash assets

COMMITTEE: Pensions, Investments and Financial Services — committee substitute recommended

VOTE: 9 ayes — Murphy, Vo, Capriglione, Flynn, Gutierrez, Lambert, Leach, Longoria, Wu

0 nays

2 absent — Gervin-Hawkins, Stephenson

WITNESSES: For — (*Registered, but did not testify*: Dick Lavine, Center for Public Policy Priorities; Will Francis, National Association of Social Workers-Texas Chapter; Dax Gonzalez, Texas Association of School Boards; Connor Cook, Texas Charter Schools Association; Daniel Gonzalez and Julia Parenteau, Texas Realtors)

Against — None

On — Rusty Martin, General Land Office; Holland Timmins, Texas Education Agency; (*Registered, but did not testify*: Jeff Gordon, General Land Office; Mike Meyer, Texas Education Agency)

BACKGROUND: The Texas Constitution of 1876 established the Permanent School Fund (PFS) and transferred half of the public lands owned by the state to the PSF as an endowment to provide a perpetual source of funding for public education. The State Board of Education manages financial assets for the PSF and the School Land Board (SLB), an independent entity of the General Land Office, oversees the management, sale, and leasing of more than 13 million acres of PSF land.

The portion of revenue the SLB maintains for purchasing additional real estate and making investments resides in the Real Estate Special Fund Account, a cash account in the state treasury. Some have called for these cash reserves to be invested as a way to generate higher returns for the PSF, allowing for increased revenue for Texas schools.

DIGEST:

CSHB 4388 would create a new liquid account for the investment of certain Permanent School Fund (PSF) assets and would require mutual quarterly reporting by the entities that share management of the PSF.

Liquid account. The bill would create the Permanent School Fund Liquid Account as an account in the state treasury to be used by the School Land Board (SLB) and the State Board of Education (SBOE).

Each quarter, the SLB would be required to hold a meeting and adopt a resolution to release from the Real Estate Special Fund Account those funds that were not being used for a purpose listed in Natural Resources Code sec. 51.402(a) and that were not required for the SLB's anticipated cash needs for the 90-day period following the meeting date. Those funds would be deposited to the credit of the Permanent School Fund Liquid Account in the state treasury.

The bill would authorize the SBOE to invest the funds in liquid assets in the same manner that it manages the PSF. Investment income and realized capital gains derived from funds in the liquid account would have to be deposited in the state treasury to the credit of the SBOE for investment in the PSF.

The SBOE could use the liquid account funds to pay for administrative costs associated with implementing the bill, including costs for contracting with professional investment management, investment advisory services, or custodial services.

At the request of the SLB, the SBOE would have to release within five business days from the liquid account fund an amount to be deposited to the credit of the Real Estate Special Fund Account in the state treasury.

SLB investments. The bill would limit the market value of certain SLB land, mineral and royalty interests and real estate investments to a sum that could not exceed 15 percent of the total PSF market value on January 1 of each even-numbered year.

Quarterly reporting. The bill would require quarterly reports by both the SBOE and the SLB to the other entity on the portion of the PSF assets and

funds for which each was responsible. The reports would have to include:

- target and actual asset allocations, by asset type, based on fair market value or net asset value;
- investment performance by asset type; and
- benchmarks and benchmark performances.

The SLB would be required to provide to the SBOE in each quarterly report its anticipated cash needs for the six-month period following the date of the report to allow the SBOE to ensure that the SLB's cash needs could be met.

The bill would take effect September 1, 2019.

SUBJECT: Establishing school year start dates for certain schools and districts

COMMITTEE: Public Education — committee substitute recommended

VOTE: 7 ayes — Huberty, Bernal, Allison, K. Bell, M. González, Meyer, Sanford

5 nays — Allen, Ashby, K. King, Talarico, VanDeaver

1 present not voting — Dutton

WITNESSES: For — Dan Neal, Camping Association of Mutual Progress; Brad Wuest, Natural Bridge Caverns; John McCord, NFIB; Johnny Blevins, Splash Kingdom Family Waterpark; Scott Joslove, Texas Hotel and Lodging Association; Dan Decker, Texas Travel Industry Association; David Teel, Texas Travel Industry Association; Danny Dawdy, Texas Baptist Camping Association; (*Registered, but did not testify*: Tris Castaneda, Anheuser-Busch; Roger Moore, Camp Longhorn; Tweety Eastland and Richard Eastland, Camp Mystic; Kathryn Garza and Severiano Garza, Camp Waldemar; Ryan Brannan, Galveston Park Board of Trustees; Jim Grace, Houston First; Dylan Cromley, League of Women Voters of Texas; Mary Maddux and Fran Rhodes, NE Tarrant Tea Party; Winter Prosapio, Schlitterbahn; Marci Blevins, Splash Kingdom Waterpark; Randall Dally and Ron Hinkle, Texas Association of Campground Owners; Carlton Schwab, Texas Economic Development Council; Kenneth Besserman, Texas Restaurant Association; Jim Sheer, Texas Retailers Association; Ron Hinkle, Texas Travel Industry Association; Ashley Harris, Visit San Antonio; William Henry, Vista Camps; and six individuals)

Against — Christina Courson, Lockhart Independent School District; Scott Muri, Spring Branch ISD, Texas Association of School Administrators; (*Registered, but did not testify*: Colby Nichols, Austin ISD; Louann Martinez, Fort Worth ISD; Bob Popinski, Raise Your Hand Texas; Barry Haenisch, Texas Association of Community Schools; Dax Gonzalez, Texas Association of School Boards; Jerod Patterson, Texas Rural Education Association; Dee Carney, Texas School Alliance; Marty De Leon, Texas Urban Council; Cindy Rodriguez)

On — Andrew Kim, Comal ISD; Columba Wilson; (*Registered, but did not testify*: AJ Crabill, Texas Education Agency; Lisa Dawn-Fisher, Texas State Teachers Association)

BACKGROUND:

Education Code sec. 25.0811 prohibits school districts from beginning instruction for students prior to the fourth Monday in August.

Education Code sec. 12A.003 authorizes a district of innovation to modify the school day or year.

DIGEST:

CSHB 233 would require an open-enrollment charter school or a public school district designated as a district of innovation to begin instruction for students for a school year on or after the third Monday in August. A local innovation plan would be prohibited from exempting a district of innovation from the requirement.

The bill would apply beginning with the 2020-2021 school year.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

CSHB 233 would provide consistency for families by mandating that charter schools and districts of innovation start no earlier than the third Monday in August.

Many small and tourism-related businesses rely heavily on summer travel profits for year-round sustainability. These businesses would benefit from a school schedule that consistently begins in late August, and the tax revenue they generate would benefit the state.

These businesses often employ high school-aged students, providing the students with educational value by allowing them to gain and apply workforce skills that could translate into their academic learning, but the businesses can have difficulty making employment decisions due to the unpredictability of annual school calendars.

The bill would not affect the quality of instruction because Texas requires a certain number of instructional minutes for students per year, rather than days. Districts of innovation still would have some flexibility in starting the school year to support student success.

The bill would be especially crucial to military families and military-connected students who can experience frequent moves and transitions that can be exacerbated by inconsistent school start dates.

OPPONENTS SAY:

CSHB 233 could be detrimental to student learning and well-being and would infringe on local control.

By postponing student learning late into the summer, the bill could add to the "summer slide," a term used to refer to the decline in academic skills and learning that students could suffer during the summer months when school is not in session. Districts of innovation have addressed the summer slide by building in additional time at the beginning of the school calendar to provide academic support in the form of remediation, acceleration, and enrichments. The bill could restrict districts' ability to offer that support.

Students that qualify for free or reduced lunch also rely on schools for consistent meals, social emotional support, and academic engagement, which are essential to student learning. School districts also use the additional days to provide teacher and staff development consistently throughout the year as opposed to frontloading it in the beginning of the school year.

By requiring a certain school start date, the bill could infringe on a district's local control to create a calendar that appropriately served the unique needs and population of that district.

SUBJECT: Creating the Oak Farms Municipal Management District

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 9 ayes — Button, Shaheen, J. González, Goodwin, E. Johnson, Middleton, Morales, Patterson, Swanson

0 nays

WITNESSES: For — Ross Martin, Cienda Partners

Against — Lee Kleinman, City of Dallas

BACKGROUND: Local Government Code ch. 375 subch. B establishes certain requirements that must be met before a municipal management district may be created, including a petition to the Texas Commission on Environmental Quality that includes a resolution of the governing body of the municipality in which the district would be created in support of the district.

DIGEST: HB 4733 would create the Oak Farms Municipal Management District and grant it certain powers, including those of issuing bonds and imposing assessments, fees and taxes.

Territorial boundaries. The bill would define the territory of the district, which would be located in the Oak Cliff area of Dallas, with regard to certain geographical features. It would establish that the district could add or exclude land, and that any mistake in the description of the territorial boundaries would not affect the existence or powers of the district as described in other parts of the bill. The bill would allow all or any part of the area of the district to be included in a tax increment or tax abatement reinvestment zone.

Board of directors. The bill would establish a board of five elected directors serving staggered terms of four years. The district would be allowed to compensate each director up to $150 for each board meeting. Total compensation could not exceed $7,200 per year.

Powers and duties. HB 4733 would specify the powers and duties allowed and prohibited to the district.

Improvement projects. The bill would grant the district the authority to construct, maintain, or finance an improvement project or service, and to contract with a governmental or private entity to accomplish any tasks related to them. The district would be allowed to use any money available to it for these purposes.

Nonprofit corporations. The bill would allow the board to create a nonprofit corporation to implement a project or provide a service. The board of directors of the municipal management district would appoint the board of directors of the nonprofit corporation, who would serve in the same manner as the board of directors of a local government corporation, except that a board member of such a nonprofit corporation would not be required to live in the district.

Economic development. The bill would allow the district to engage in activities that stimulate business and commercial activity in the district, including the establishment and administration of programs that would make loans and grants of public money and would provide district personnel and services. The bill would allow the district to exercise certain economic development powers generally provided to municipalities.

Eminent domain prohibited. The bill would prohibit the district from exercising the power of eminent domain.

Other powers. The bill would allow the district to contract with the city or another qualified party to provide law enforcement services. The district also would be allowed to join and pay dues to a charitable or nonprofit organization that performed a service or provided an activity consistent with the district's purpose. The bill would allow the district to acquire, build, lease as lessor or as lessee, own, and manage parking facilities.

Assessments. The bill would allow the board to impose and collect an assessment for any purpose that the district is authorized to pursue. The board would be prohibited from using assessments to finance a service or

improvement project unless a written petition requesting that service or improvement had been filed with the board. The petition would be required to have been signed by the owners of a majority of the assessed value of real property in the district subject to assessment.

Liens. The bill would assign assessments and related charges incurred by the district as first and prior liens against the property assessed, superior to any other lien or claim other than a lien or claim for ad valorem taxes from certain other political subdivisions. It also would assign such liens as the personal liability of, and a charge against, the owners of the property even if the owners were not named in the assessment proceedings. The lien would be effective from the date of the board's resolution imposing the assessment until the date the assessment was paid. The board would be allowed to enforce the lien in the same manner as it would enforce an ad valorem tax lien against real property.

Taxes and bonds. HB 4733 would allow the district to tax and to issue bonds.

Ad valorem taxes. The bill would require the board to get voter approval through an election before imposing an ad valorem tax.

Operations and maintenance tax. The bill would allow the district to impose an operation and maintenance tax on taxable property in the district, if authorized by a majority of the district voters, for any purpose including the maintenance and operation of the district, the construction or acquisition of improvements, or the provision of services. The board would be allowed to set the tax rate at any amount up to the one approved by voters at the election.

Bonds. The bill would allow the district to borrow money on terms determined by the board. The board would be allowed to issue bonds, notes or other obligations payable from ad valorem taxes, assessments, impact fees, revenue, contract payments, grants, or other district money, to pay for any authorized district purpose.

HB 4733 would allow the district to issue bonds payable from ad valorem taxes if approved in an election.

The bill would allow the district to issue bonds without an election if they were secured by revenue other than ad valorem taxes or contract payments, provided that certain requirements regarding contract elections had been met.

If the district issued bonds payable wholly or partly from ad valorem taxes, the bill would require the board to impose a continuing direct annual ad valorem tax. The tax would be required to remain in effect for each year that all or part of the bonds were outstanding, in compliance with certain requirements relating to tax levies for bonds.

Debt obligations payable from assessments. The bill would allow the district to issue a debt obligation, by public or private sale, based on bonds, notes or other obligations payable wholly or partly from assessments if the district had previously entered into an arrangement with a municipality or retail utility provider by which it financed an improvement with an obligation and conveyed that improvement to, or allowed it to be operated or maintained by, the municipality or retail utility provider.

Consent of municipalities. The bill would not allow the board to issue its first bonds payable from ad valorem taxes until each municipality in whose corporate limits or extraterritorial jurisdiction the district was located had consented by ordinance or resolution to the creation of the district and to the inclusion of land in the district.

Dissolution. HB 4733 would require the board to dissolve the district on written petition of the owners of 66 percent or more of the assessed value of the district property subject to assessment or from the owners of 66 percent or more of the surface area of the district, excluding roads, streets and other property exempt from assessment by the district. The bill would allow the board to dissolve the district by majority vote at any time.

The bill would not allow the district to be dissolved if it had any outstanding debt or had a contractual obligation to pay money. The district could not be dissolved if it owned, operated, or maintained public works, facilities, or improvements, unless it made arrangements for another

person to own, operate, or maintain the public works, facilities, or improvements.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

HB 4733 would allow for increased investment in infrastructure and economic development in an area that is currently underdeveloped. Concerns about a lack of municipal oversight are misplaced, as local input into the creation and governance of municipal management districts is provided under current statute.

OPPONENTS SAY:

HB 4733 would not allow for sufficient input from local governments. Safeguards should be put in place for property tax exemptions, prohibitions against assessments of sales taxes, and local oversight.